

Patent
Attorney Docket No. 76966

REMARKS

In response to the outstanding Communication, Applicant presents the following remarks. Amended Claims 1-14 are directed to a single product and process of making the same (claims 1-10 and 11-14, respectively). The restriction requirement maintained that the product could be perceived as combination and subcombination, where the subcombination defined in Claims 6-10 had a separate utility.

As presently claimed the product in both Claims 1-5 and Claims 6-10 specifically requires the use of silica particles and therefore excludes the products without silica particles. Whether the remaining claim limitations might be applicable to a graphite particle is not relevant as the claim language defines the invention as applying to and requiring silica particles. Furthermore, the claimed utility of the product of Claims 1-5 is high performance liquid chromatography; the claimed utility of the product of Claims 6-10 is also high performance liquid chromatography. The speculative separate utility proposed for the product of Claims 6-10 is not sufficient to overcome the fact that the products overlap entirely in their scope, i.e. the subject matter of Claim 1.

With regard to the requirement to elect as between product(s) and process claims, Applicant respectfully requests that process Claims 11-14 be examined together with Claims 1-10 in the present application because it is not believed to present an undue burden. Should it be maintained that the product(s) and process inventions are distinct, Applicant notes under *In re Ochiai* they may rejoin any non-elected process claims dependent upon an allowable product once those process claims have been indicated as allowable.

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In the event that the requirement is maintained despite the fact that the claims are directed to a single invention, Applicants hereby elect Group I, Claims 1-5, with traverse.

If necessary to effect a timely response, this paper should be considered as a Petition for Extension of Time sufficient to effect a timely response, please charge any fees to Deposit Account No. 501249.

Respectfully Submitted,

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